

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JAMES DIMITRI DAVENPORT,

Petitioner,

Civil No. 07-1279-AA

v.

ORDER

BRIAN BELLEQUE,

Respondent.

AIKEN, District Judge.

By Order (#10) entered March 17, 2008, petitioner was allowed 30 days to show cause in writing why respondent's unopposed Response [motion to dismiss] (#7) should not be allowed and advised that failure to show cause as directed would result in the dismissal of this proceeding for failure to prosecute.

Petitioner has not filed a response to the court's order, or requested an extension of time in which to do so.

Respondent's Exhibits (#9) establish that petitioner's federal habeas corpus petition was not filed within the one year statute of limitations prescribed by 28 U.S.C. § 2244(d).

The AEDPA's limitations period may be equitably tolled if extraordinary circumstances beyond a prisoner's control made it impossible to file a petition on time. Miles v. Prunty, 187 F.3d 1104, 1107 (9th Cir. 1999). In order to establish entitlement to tolling of the § 2241(d)(1) limitations period, a petitioner must demonstrate that extraordinary circumstances beyond the prisoner's control made it impossible to file the petition on time. Allen v Lewis, 255 F.3d 798, 799 (9th Cir. 2001); see also, Green v. White, 223 F.3d 1001, 1003 (9th Cir. 2000). Petitioner in this case has not established either circumstances.

Petitioner's Petition (#1) is denied on the ground that his claims are barred by the statute of limitations and for failure to prosecute. This proceeding is dismissed.

DATED this 22 day of April, 2008.

/s/ Ann Aiken
Ann Aiken
United States District Judge